UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/764,369 | 01/26/2004 | Randall White | | 8101 |

7590 05/17/2006

Theresa M. Seal
C/O The Inverntor's Network, Inc
332 Academy Street
Carnegie, PA 15106

| EXAMINER | |
|---|---|
| CHAWLA, JYOTI | |
| **ART UNIT** | **PAPER NUMBER** |
| 1761 | |

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/764,369 | WHITE, RANDALL | |
| | Examiner | Art Unit | |
| | Jyoti Chawla | 1761 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1 and 2* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 2* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *1/26/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

> Determining the scope and contents of the prior art.
> Ascertaining the differences between the prior art and the claims at issue.
> Resolving the level of ordinary skill in the pertinent art.
> Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Beef Jerky Recipe" hereinafter "Jerky" posted on www.microwebtech.com, posted December 12, 1998 (Date verified by www.archive.org), in view of recipe for "Beef Venison Jerky" hereinafter "Venison" posted on www.recipelink.com on January 1, 1999.

4. Regarding Claim 1, "Jerky" teaches method of producing beef jerky by slicing the beef product into thin strips (recipe body, page 1); marinating the beef strips (recipe body, page 1) for up to 24 hours or more in the refrigerator with soy sauce, teriyaki

sauce, mesquite liquid smoke (any flavor), Worcestershire sauce (ingredient list), dehydrating the beef strips (recipe body, page 2) until one can break off a piece with ease (recipe body, page 2) and packaging the beef strips into sealed containers or zip lock bags (recipe body, page 2).

5. Regarding claim 2, "Jerky" teaches a plurality of thinly sliced beef strips as it teaches thinly sliced trimmed 5lb piece of beef brisket (ingredient list) the beef strips intermixed and soaked in soy sauce, teriyaki sauce, Worcestershire sauce, mesquite liquid smoke (ingredient list), and the beef strips dehydrated until they are and capable of being broken into pieces by an individual's hands and fingers (recipe body, page 2).

6. Regarding claims 1 and 2 "Jerky" does not teach addition of salt per se, however, salt is present as part of the sauces taught by "Jerky" to make the marinade. However, "Venison" recipe teaches salt to taste in its ingredient list. Therefore, it would have been obvious to one with ordinary skill in the art to modify "Jerky" and add salt to taste, as salt has been a well known pickling, dehydrating and preserving agent and has been employed in the art for making jerky as taught by "Venison".

7. Regarding the instantly-claimed Beef Jerky composition, there appears to be no unexpected cooperative relationship or properties resulting from the use of such commonly-used ingredient as salt, which would be selected by one of ordinary skill in the art to contribute its known properties and flavor characteristics to the claimed composition.

8. Regarding claims 1 "Jerky" does not teach marinating up to two hours but teaches longer marination for 24 hours or more. "Venison" also teaches marination in the refrigerator overnight or more, for extra flavor (recipe body). Marination is a time and temperature dependent process. Since the applicant does not specifically recite the marianation temperature, 2 hours at room temperature would provide a different degree of marination as compared to two hours in the refrigerator. Therefore, it would have been obvious to one with ordinary skill in the art to modify "Jerky" based on the teachings from "Venison" and modify marination time in the range recited by the applicant based on the temperature at which the meat is being marinated (room or refrigeration), relative infusion of the flavors and the degree of tenderness desired in the final product.

9. Regarding claims 1 and 2 "Jerky" does not teach "crisp" and specifically states that crisp is undesirable and means the meat has been overly dehydrated, but clearly teaches that the Jerky should be dry and done when it no longer bends and can be broken off into a piece with ease (recipe body, page 2), which is also the intent of the applicant. Since "crisp" is a relative term, it may mean easily breakable (applicant) to one individual and crumbling on its own ("Jerky") to another. Therefore, after taking into account the relative nature of the term "crisp" and then considering applicant's recitation as a whole, i.e., "crisp and capable of being broken into pieces by an individual's hands and fingers", "Jerky" inherently teaches the same characteristic in its product as recited by the applicant.

10. Further, attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows:

11. This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. In re Benjamin D. White, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Hanson (US 6099881) teaches curing method for food products in general.

14.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jyoti Chawla 5/1/06
Jyoti Chawla
Examiner
Art Unit 1761

KEITH HENDRICKS
PRIMARY EXAMINER